



State of Washington
Department of Revenue

Excise Tax Advisory

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INVENTORY DONATED TO CHARITY SUBJECT TO USE TAX

Issued January 20, 1967

Are products donated to charitable organizations by a donor who owns the products but has not used them, subject to assessment of Use Tax?

The taxpayer was assessed Use Tax on charitable contributions of products he maintained in his inventory. The taxpayer claimed that he did not "use" the products as the act of donation cannot be construed to be "use". The taxpayer also pointed out that the language of the statute including the first act of dominion or control over tangible personal property as a "use" does not apply because the donation of the product was the last, not the first, act of dominion or control which he exercised over the products.

The Tax Commission noted the terms "use", "used", "using" or "put to use" are defined by RCW 82.12.010(2) to

"... have their ordinary meaning, and shall mean the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within this state."

The Tax Commission ruled that the taxpayer clearly "used" the products he donated to charity within the terms of the statute and the assessment was sustained. The Commission stated that the taxpayer in his analysis of the statute apparently overlooked the parenthetical phrase "as a consumer". In

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other words, "use" is defined to include the first act of dominion or control over tangible personal property as a consumer. "Consumer" is defined by RCW 82.04.190 to include any person who purchases, acquires, owns, holds, or uses tangible personal property other than for the purpose of resale as tangible personal property in the regular course of business. Since the taxpayer did not resell the products in question but rather, donated them, he was a "consumer" under the statute and his first act of dominion or control as a consumer gave rise to the Use Tax liability. This decision follows Published Rule 178, "Use Tax", which provides that:

". . . the person liable for the tax is the . . . donor and . . . donee, if the tax is not paid by the . . . donor . . ."